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9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF WASHINGTON  
11

12 R.W., individually and on behalf of his  
13 marital community,

14 Plaintiff,

15 v.

16 COLUMBIA BASIN COLLEGE, a  
17 public institution of higher education;;  
18 REBEKAH WOODS, in her official  
19 capacity; and RALPH REAGAN, in his  
20 individual and official capacities,

21 Defendants.

Cause No. 4:18-cv-05089-MKD

REPLY IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT

22 As the Court may have observed, college campuses and universities are  
23 currently facing the difficulties that come with being a state actor and separating  
24 protected speech under the First Amendment from unprotected conduct. These  
25 difficulties are not new, nor unique. The content of speech within protests and similar



1 demonstrations is protected under the First Amendment. *Brandenburg v. Ohio*, 395  
2 U.S. 444, 445 (1969); *Kessler v. City of Charlottesville, Virginia*, No. 3:17CV00056,  
3 2017 WL 3474071, at \*1 (W.D. Va. Aug. 11, 2017) (unpublished). Unlawful  
4 conduct is not protected under the First Amendment, even when undertaken in  
5 furtherance of the speaker's message. *See Zurcher v. Stanford Daily*, 436 U.S. 547,  
6 550 (1978) (upholding search warrant directed to university newspaper for film and  
7 pictures relating to Stanford protest where protesters barricaded the university  
8 hospital building and assaulted police officers who entered the building). In this case,  
9 it is undisputed that R.W. only engaged in speech and not conduct. Yet, Defendants  
10 continually minimize the protections of the First Amendment in regard to speech.  
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14 This begins with the Supreme Court's seminal case on the First Amendment  
15 rights of students in higher education, *Healy v. James*. 408 U.S. 169 (1972). *Healy*  
16 arises from Central Connecticut State College's decision to not recognize a local  
17 chapter of the Students for Democratic Society (SDS) which formed at the college.  
18 *Id.* at 170-71. By the time of the student's petition, the national SDS leadership was  
19 overtaken by a group later to be known as the Weather Underground. David  
20 Horowitz, *Leftwing Fascism and the American Dream*, 22 Wm. Mitchell L. Rev.  
21 467, 468 (1996); Burrough, Brian. *Days of Rage: America's Radical Underground,*  
22 *the FBI, and the Forgotten Age of Revolutionary Violence*, pgs. 68-70. New York:  
23 Penguin Random House, 2015.  
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1 On April 24, 1970, the District Court of Connecticut entered a memorandum  
2 decision based on stipulated facts finding the college in denying the group's  
3 recognition had deprived the students of their rights under the First, Fifth and  
4 Fourteenth Amendments. *Healy v. James*, 311 F. Supp. 1275, 1277 (D. Conn.),  
5 *supplemented*, 319 F. Supp. 113 (D. Conn. 1970), *aff'd*, 445 F.2d 1122 (2d Cir.  
6 1971), *rev'd*, 408 U.S. 169. Approximately a month before this decision was  
7 rendered, a townhouse in Greenwich Village exploded where the Weather  
8 Underground was building explosives to detonate at an upcoming non-  
9 commissioned officers dance at Fort Dix, killing three people. Rudd, Mark.  
10 *Underground, My Life with the SDS and the Weatherman*, pg. 196. New York:  
11 Harper Collins, 2009; *see also Boudin v. Thomas*, 543 F. Supp. 686, 691 (S.D.N.Y.  
12 1982) ("Boudin was under investigation for involvement in a 1970 Greenwich  
13 Village bomb explosion, her association with the Weather Underground, her ten-  
14 year fugitive status and the present charges against her...").

15 After the college granted the group an evidentiary hearing, the district court  
16 upheld the decision to deny the group recognition, which was affirmed by the Second  
17 Circuit. *Healy*, 319 F. Supp. 113; 445 F.2d 1122. When asked about SDS' reputation  
18 for campus disruption, the student group members declined to adhere to campus  
19 rules, such as refraining from disrupting classes on campus. 408 U.S. at 173. On  
20 June 26, 1972, the Supreme Court issued its opinion reversing the district court and  
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1 Second Circuit, concluding the college's denial of the group's recognition violated  
2 the student's rights under the First Amendment. *Id.* at 194. By the time the decision  
3 was issued, domestic terrorist bombings by groups such as the Weather Underground  
4 were a frequent occurrence. *See All. to End Repression v. City of Chicago*, 742 F.2d  
5 1007, 1015 (7th Cir. 1984) (*citing* Motley, *US Strategy to Counter Domestic*  
6 *Political Terrorism* 16 (1983)) ("Between 1970 and 1980, domestic terrorist  
7 organizations committed more than 400 bombings in the United States."). These  
8 extreme circumstances did not overcome the students' rights under the First  
9 Amendment.  
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12 We note, in so holding, that the wide latitude accorded by the  
13 Constitution to the freedoms of expression and association is not  
14 without its costs in terms of the risk to the maintenance of civility and  
15 an ordered society. Indeed, this latitude often has resulted, on the  
16 campus and elsewhere, in the infringement of the rights of others.  
17 Though we deplore the tendency of some to abuse the very  
18 constitutional privileges they invoke, and although the infringement of  
19 rights of others certainly should not be tolerated, we reaffirm this  
20 Court's dedication to the principles of the Bill of Rights upon which our  
21 vigorous and free society is founded.

22 *Healy*, 408 U.S. at 194.

23 The Supreme Court has not retreated from the broad understanding of  
24 protections under the First Amendment for speech. The decision in *Healy* was  
25 discussed extensively in *N.A.A.C.P. v. Claiborne Hardware Co.*, which in turn was  
discussed in the Court's recent decision *Counterman v. Colorado*. 458 U.S. 886, 918  
(1982); 600 U.S. 66, 76. In *Claiborne*, a local chapter of the NAACP voted to



1 boycott white merchants in Port Gibson, Mississippi, after county officials refused  
2 to address citizens' demand for racial equality and recognition. *Claiborne Hardware*  
3 *Co.*, 458 U.S. at 889. The boycott was enforced by citizens who stood outside the  
4 businesses to identify those who did not respect the boycott. *Id.* at 903. "The names  
5 of persons who violated the boycott were read at meetings of the Claiborne County  
6 NAACP and published in a mimeographed paper entitled the 'Black Times.'" *Id.* at  
7 903-904. Charles Evers, the field secretary of the NAACP, told the crowd during a  
8 speech "[i]f we catch any of you going in any of them racist stores, we're gonna  
9 break your damn neck..." and "warned that the Sheriff could not sleep with boycott  
10 violators at night." *Id.* at 903. These allusions to violence were not illusory. Boycott  
11 breakers had bullets shot into their homes, bricks thrown through their car windows,  
12 had their property stolen, and were assaulted. *Id.* at 904-05. The merchants brought  
13 an action against Evers, the NAACP, and 146 individual defendants. *Id.* at 889-90.  
14 After an eight-month trial, the court found liability as all but 18 of the named  
15 defendants, the majority of which was upheld on appeal by the Mississippi Supreme  
16 Court. *Id.* at 893; 894-95.

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21 The Supreme Court granted the petition for certiorari. *Id.* at 896. The  
22 merchants asked the Court to affirm the decision, arguing "Charles Evers may be  
23 held liable because he 'threatened violence on a number of occasions against boycott  
24 breakers.'" *Id.* at 898. The Court rejected this argument, noting that "[t]he  
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1 emotionally charged rhetoric of Charles Evers' speeches did not transcend the  
 2 bounds of protected speech set forth in *Brandenburg*.” *Id.* at 928.

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 4 While *Claiborne* is an incitement case, the application of incitement  
 5 jurisprudence informs the analysis of true threats. This is evident not only based on  
 6 logic, but also based on the discussion of *Claiborne* in *Counterman*. *Counterman*,  
 7 600 U.S. at 76. “[T]he First Amendment precludes punishment, whether civil or  
 8 criminal, unless the speaker's words were ‘intended’ (not just likely) to produce  
 9 imminent disorder.” *Id.* (citing *Hess v. Indiana*, 414 U.S. 105, 109 (1973) (emphasis  
 10 added). Under Defendants’ restrictive theory of the First Amendment, Evers’ speech  
 11 would be unprotected by the First Amendment – direct threats of violence  
 12 precipitated by actual violence. *Cf. United States v. Bagdasarian*, 652 F.3d 1113,  
 13 1115 (9th Cir. 2011) (“Re: Obama fk the [n-word], he will have a 50 cal in the head  
 14 soon” and (2) “shoot the [abbreviated n-word]” were not criminal threats under 18  
 15 U.S.C. § 879(a)(3)).

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 17 It would be one thing if the Supreme Court had recognized a special limitation  
 18 for speech by college students. However, the Supreme Court has said the exact  
 19 opposite:  
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 23 [T]he precedents of this Court leave no room for the view that, because  
 24 of the acknowledged need for order, First Amendment protections  
 25 should apply with less force on college campuses than in the community  
 at large. Quite to the contrary, ‘(t)he vigilant protection of constitutional  
 freedoms is nowhere more vital than in the community of American  
 schools.’ *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).



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2 *Healy*, 408 U.S. at 180. As these cases demonstrate, we do not live in unique times  
3 nor is an acute need to rethink the protections of the First Amendment based on  
4 emerging circumstances. R.W. had concerning thoughts which he spoke about with  
5 his physician to seek treatment. Defendants punished R.W. for his speech. These are  
6 the undisputed facts of this case. To conclude that this speech is not protected by the  
7 First Amendment would be a shocking constriction of civil rights guaranteed under  
8 the Constitution. As a result, the Court should grant R.W.'s motion for summary  
9 judgment and deny Defendants' motion for summary judgment.  
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12  
13 DATED this 6<sup>th</sup> day of May, 2024.  
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15 *s/Bret Uhrich*

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CERTIFICATE OF SERVICE

I hereby certify that on this 6<sup>th</sup> day of May 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Nicholas Ulrich: [nicholas.ulrich@atg.wa.gov](mailto:nicholas.ulrich@atg.wa.gov)

*s/ Bret Uhrich*

Bret Uhrich

